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FISCAL IMPACT REPORT

ORIGINAL DATE 2/28/21

SPONSOR Dow/Garcia, MP LAST UPDATED _____ HB 259

SHORT TITLE Contractor & Subcontractor Reimbursement SB _____

ANALYST Klundt/Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		≥\$30 million	≥\$30 million	≥\$60 million	Recurring	General, Federal, HSD
		Significant	Significant	See Fiscal Implications	Recurring	Various State Agency Operating Budgets

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Aging and Long-Term Services Department (ALTSD)
 Administrative Office of the Courts (AOC)
 Department of Health (DOH)
 Department of Information Technology (DoIT)
 Department of Transportation (DOT)
 Early Childhood Education and Care Department (ECECD)
 General Services Department (GSD)
 Human Services Department (HSD)
 New Mexico Attorney General (NMAG)
 Workforce Solutions Department (WSD)

SUMMARY

Synopsis of Bill

House Bill 259 (HB259) requires all public contracts for services executed after July 1, 2021, include a provision that a contractor or subcontractor who pays an employee the state minimum wage shall pay that employee the current state minimum wage. Further, the state shall reimburse the contractor and subcontractor for any increase in the employee's wage due to state minimum wage increases.

FISCAL IMPLICATIONS

In analysis to similar legislation from 2019, the Medical Assistance Division of the Human Services Department “reviewed a study conducted by the University of Leicester (Lemos, 2005) that found that a 10 percent increase in the minimum wage resulted in 0.2 percent to 0.3 percent increase in prices overall. Assuming that this is true for the Medicaid program, there could be a \$24 million increase in Medicaid expenditures (\$5 million increase in General Fund) in FY20 and an additional \$30 million increase in Medicaid expenditures (\$10 million increase in General Fund) in both FY21 and FY22.”

HSD also stated the department has many contracts with various entities across the state. These contracts are required to comply with state law, including minimum wage requirements. HB259 would require an increase in funding for any contract where a minimum wage increase results in additional costs to the contractor. If the budget was not increased through the appropriation process, the department would be forced to purchase fewer services to allow the contractor to address minimum wage and be held harmless.

The breadth of services this bill would impact across state agencies is unquantifiable at this time but may be extensive. If enacted, state agencies in collaboration with the Department of Finance and Administration would need to re-evaluate many state services to determine increases as provided by this bill.

For example, ECECD has an FY21 budget for childcare assistance of \$158 million. This funding is distributed by state childcare contracts. Should employees of childcare contractors receive minimum wage, HB259 may entitle them to receive an increase in their contracts from the state. Currently childcare rates are set in regulation, it is unclear if the state would then have to increase rates set in these regulations to meet the requirements of this bill. Similarly, ALTSD offers senior employment and other senior service programs that provide employment at minimum wage. Requiring the agency to reimburse contractors in the case of a wage increase would increase costs to the agency and reduce the funding available for services.

SIGNIFICANT ISSUES

The current minimum wage in New Mexico is \$10.50 per hour. Effective January 1, 2022, the wage will increase to \$11.50 per hour, and effective January 1, 2023, the wage will increase to \$12 per hour. The provisions of HB259 take effect on July 1, 2021, which would seem to result in the state having to pay a contractor to defray the increased costs of the previously scheduled minimum wage increases scheduled for January 2022 and 2023.

Because the minimum wage increases are known in advance, contractors may have the opportunity to build in an increased labor cost assumptions into state contracts. WSD notes no other private employers are provided an automatic increase from the state to offset the cost of increasing the minimum wage and notes HB259 creates a subsidy for government contractors. It is unclear if the intent of this legislation is to cap the wage state contractors are responsible to pay at 2021 levels or if the intent is only to cover unanticipated wage increases enacted after the award of a contract and affecting the labor cost assumptions of that contract.

It is likely a number of state contractors would be unaffected by these changes. For example, GSD notes, because the department typically enters contracts for services involving legal, IT,

accounting, architectural and design services, and other professional services, the department would likely be unaffected by the provisions of HB259.

TECHNICAL ISSUES

NMAG notes:

State contracts are subject to the New Mexico Procurement Code. NMSA 1978, Section 13-1-30. The Procurement Code defines both Contract and Services.

HB259 defines “Contract” as “any agreement for the procurement of services while “Contract” is currently defined under the Procurement Code, NMSA 1978, Section 13-1-41 as “any agreement for the procurement of items of tangible personal property, services or construction.”

“Services” defined under HB259 is similar to “Services” currently defined under the Procurement Code, NMSA 1978, Section 13-1-87. The significant difference is HB259 deletes services that” includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body” from its definition for services

KK/CJ/al